

HOUSE BILL 739

By Daniel

AN ACT to amend Tennessee Code Annotated, Title 49, Chapter 7, Part 1, relative to freedom of speech on campuses of state institutions of higher education.

WHEREAS, Article I, Section 19, of the Tennessee Constitution recognizes "[t]he free communication of thoughts and opinions, is one of the invaluable rights of man, and every citizen may freely speak, write, and print on any subject, being responsible for the abuse of that liberty"; and

WHEREAS, the state institutions of higher education in Tennessee have historically embraced a commitment to freedom of expression in policy; and

WHEREAS, in recent years, state institutions of higher education have abdicated their responsibility to uphold free speech principles, and these failures make it appropriate for all state institutions of higher education to restate and confirm their commitment in this regard; and

WHEREAS, last year, the Committee on Freedom of Expression at the University of Chicago, an institution long known for its commitment to the ideals of free and open inquiry, academic freedom, and fair debate, released a statement on the importance of freedom of expression on campuses. These principles, the Chicago Principles, are an inspiring articulation of the critical importance of free expression in higher education; and

WHEREAS, the General Assembly views freedom of expression by students in higher education as being of critical importance and requires that each institution of higher education ensure free, robust, and uninhibited debate and deliberations by students of Tennessee institutions whether on or off campus; and

WHEREAS, the General Assembly has determined that it is in the best interests of the state and of all state institutions of higher education to officially confirm freedom of speech by students as a fundamental right; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known and may be cited as the "Tennessee Student Free Expression Act."

SECTION 2. Tennessee Code Annotated, Title 49, Chapter 7, Part 1, is amended by adding the following language as a new section:

(a) As used in this section:

(1) "Expression" means the act of expressing by words, utterances, signs, symbols, or otherwise;

(2) "Free speech" means the clauses of Article I, § 19, of the Tennessee Constitution and of the first amendment to the United States Constitution that protects freedom of speech and forbids laws abridging the freedom of speech;

(3) "Harassment" means conduct directed toward a person that is so severe, pervasive, and objectively offensive that it could be said to deprive the student of access to the educational opportunities or benefits provided by the institution. Harassment does not include constitutionally protected activity or conduct that serves a legitimate purpose;

(4) "Public forum" means an area that is open to all expression that is protected under the first amendment to the United States Constitution;

(5) "Semester" means a one-half-year term at a college or university, typically lasting fifteen (15) to eighteen (18) weeks; and

(6) "Student":

(A) Means any person enrolled in a course of study in a state institution of higher education; and

(B) Includes organizations that are composed of students currently enrolled at the institution of higher education.

(b) The governing board of each state institution of higher education shall adopt a policy on freedom of speech and expression for students of the institution, which must be included in the institution's student code of conduct, that:

(1) Confirms that freedom of speech is a fundamental right and that the institution is committed to free and open inquiry by students in all matters;

(2) Guarantees students the broadest possible latitude to engage in noncommercial expressive activity;

(3) Does not:

(A) Shield individuals from ideas and opinions considered unwelcome, disagreeable, or even deeply offensive; or

(B) Discourage or prohibit any type of speech or expressive activity, except as provided in this section;

(4) Promotes a climate of mutual respect and concerns about civility; provided, that lack of mutual respect or civility shall not be a justification for closing off the discussion of ideas no matter how offensive or disagreeable the ideas may be to members of the community;

(5) Allows the institutions to restrict expression only for instances that include:

(A) Violations of state or federal law;

(B) Expression that a court has deemed defamation;

(C) Genuine threats or harassment;

(D) An unjustifiable invasion of privacy or confidentiality;

(E) An action that directly conflicts with the function of the university; or

(F) Reasonable viewpoint and content-neutral restrictions on the time, place, and manner of expression, consistent with this section and in service of a significant institutional interest; provided, that these restrictions are clear, published, content- and viewpoint-neutral criteria, and provide ample alternative means for expression. Any such restrictions shall allow for members of the institution's community to spontaneously and contemporaneously assemble;

(6) Deems outdoor campus areas of the institution to be public forums.

Any person who wishes to engage in noncommercial expressive activity shall be permitted to do so freely;

(7) May require any person who is not employed by the institution or enrolled at the institution as a student to obtain prior permission or a permit from the institution before engaging in the expressive activity. If prior permission from the institution is required by the institution, then the appropriate administrator shall process the request within forty-eight (48) hours of receipt of the request;

(8) Does not allow the institution to suppress debate or deliberation because the ideas being debated or deliberated upon are considered to be offensive, unwise, immoral, or wrong;

(9) Allows students to openly and vigorously contest ideas that the institution or members of the institution's community may oppose;

(10) Permits students to engage in debate and deliberation as part of the mission of the institution;

(11) Authorizes a student to criticize and contest the views of the institution's community; provided, that the student shall not obstruct or otherwise interfere with the freedom of others to express views contrary to the student;

(12) Promotes a lively and fearless freedom of debate and deliberation while protecting free speech when the institution or members of the institution condemn or attempt to restrict speech;

(13) Requires the campuses of the institution be open to any speaker whom students, student groups, or members of the faculty have invited;

(14) Includes sanctions for anyone under the jurisdiction of the institution who interferes with the free expression of others; and

(15) Provides that the institution shall strive to remain neutral on the public policy controversies of the day, and may not take action, as an institution, on such controversies in such a way as to require students or faculty to publicly express a given view on public policy.

(c) The policy in subsection (b) shall include a bill of student rights that:

(1) Recognizes that in-state institutions of higher education there are certain fundamental and indisputable rights to freedom of inquiry, freedom of thought, and freedom of expression;

(2) Encourages students to seek truth and knowledge and does not abridge searchers' rights to reveal their findings, by both spoken and written word, even if in so doing they might find themselves at variance with their peers as well as the lay community;

(3) Reassures students that to dissent or disagree with generally accepted truth and knowledge is acceptable and essential to free debate and

inquiry and that students shall not be punished, disciplined, or censored by the institution for the content of the students' lawful speech;

(4) Allows students to be free to discuss and express any views that are relevant to the subject matter presented by the instructor or other class members;

(5) Recognizes that, in exercising this freedom, the student shall not interfere with the academic process of the class by speaking to or behaving toward others in a manner constituting unwelcome, targeted conduct that is so severe, pervasive, and objectively offensive, and that doing so undermines and detracts from the educational experience of those to whom the speech or behavior is targeted, that the targeted person is effectively denied equal access to the resources and opportunities of state institutions of higher education; and

(6) Gives faculty the right to regulate class speech; provided, that the faculty regulates the speech in a viewpoint- and content-neutral manner.

(d) In order to facilitate robust debate and the free exchange of ideas, the institutions shall allow peaceful assembly and the expression of ideas and opinions.

(e)

(1) Nothing in this section shall limit the right to student expression at any public place on the premises of the institution; provided, that the expressive activity or related student conduct shall not substantially disrupt essential activities and functions of the institution.

(2) As used in this subsection, "disrupting essential activities and functions of the institution" includes:

(A) Substantially obstructing building entrances, walkways, and rights-of-way;

(B) Obstructing vehicular or pedestrian traffic on or adjacent to the institution; or

(C) Interfering with classes, meetings, events, or ceremonies or with other essential processes of the institution.

(f)

(1) The governing boards of each institution shall cause the institution to provide periodic notice of the free speech protections created pursuant to this section to students of the institution.

(2) Notice and explanation of the free speech protections of this section shall be:

(A) Included in the freshman orientation programs; and

(B) Communicated to the students by email or other type of electronic communication.

(3) The notice shall be provided to the students:

(A) No later than seven (7) days after the commencement of the academic semester; and

(B) At least one (1) time each semester.

(4) The notice shall describe to all students the policies regarding free expression consistent with this act.

(g) If an institution of higher education is found to be in violation of this section, a student may file a complaint or a petition for injunctive relief in chancery court in the county in which the school is located. The prevailing plaintiff shall be awarded actual damages and injunctive relief, plus reasonable attorney's fees and court costs.

(h) Nothing in this section shall require the institutions of higher education to fund expenses associated with student speech or expression.

SECTION 3. The governing body of each institution of higher education is authorized to promulgate rules to effectuate the purposes of this act. The rules shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 4. This act shall take effect July 1, 2017, the public welfare requiring it.